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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,040	06/11/2001	Mohan Kalkunte	108339-00071	9814
32294	7590	06/10/2005	EXAMINER	
SQUIRE, SANDERS & DEMPSEY L.L.P.			PHAN, TRI H	
14TH FLOOR			ART UNIT	
8000 TOWERS CRESCENT			PAPER NUMBER	
TYSONS CORNER, VA 22182			2661	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/877,040	<b>Applicant(s)</b> KALKUNTE, MOHAN	
	<b>Examiner</b> Tri H. Phan	<b>Art Unit</b> 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-13 is/are pending in the application.  
     4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-5 and 9-13 is/are allowed.
- 6) ☐ Claim(s) 6 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment/Arguments***

1. This Office Action is in response to the Response/Amendment filed on January 21<sup>st</sup>, 2005. Claim 8 is now canceled. Claims 1-7 and 9-13 are now pending in the application.

### ***Drawings***

2. The corrected or substitute drawings were received on January 21<sup>st</sup>, 2005. These drawings are acceptable by the Examiner.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on 1/21/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on the Application No. 09/877,010 has been reviewed and is NOT accepted.
4. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:
  - a. The disclaimer fee of \$130.00 in accordance with 37 CFR 1.20(d) has not been submitted, nor is there any authorization in the application file to charge a specified Deposit Account or credit card.
  - b. The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 6 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, and 4 of copending Application No. 09/877,010. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention (claim 1) of the copending Application '010' also discloses the network switch for network communications, which comprises the first data port interface supporting data port for transmitting and receiving data at first data rate,

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second data port interface supporting data port for transmitting and receiving data at second data rate, memory management unit for communicating data from first data port interface and second data port interface and memory, communication channel; wherein the first and second data port interfaces determine the egress port or egress ports for the incoming data packet based on the VLAN ID (see claim 1), modifying the incoming data packet (see claim 4), wherein the higher capacity network switch is used for multicast packets in compare with the lower capacity network switch using for unicast packets (see claim 3) through the trunk port. However, the copending Application '010' claim fails to disclose using different type switches, e.g. *'first and second type switches'*, in communicate with the first and second data port interfaces. Such claimed features would have been obvious to one having ordinary skill in the art to be applied on the claimed invention of the copending Application as different type of switches using for the tagged and untagged incoming data packets, for improving performance on the stacked linked network switches with multiple types.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

7. Claims 1-5 and 9-13 are allowed. The following is an examiner's statement of reasons for allowance:

Claims 1-5 and 9-13 are considered allowable since when reading the claims in light of the specification, none of the references of record-alone or in combination disclose or suggest the combination of limitations specified in the independent claims including.

Substantially regarding claim 1, the prior art of record fails to disclose the method for handling data packets in the series of network switches which comprises steps such as receiving the incoming data packets at the data port of the first type of switch, resolving the stack tag from the header for forwarding to the second type of switch operating at the first data rate, resolving the destination address for modifying the packet's header and especially forwarding the incoming data packet on the second stack connection operating at the second data rate to another second type switch, modifying the header, determining the egress port and forwarding data packet on the third stacked connection operating at the first data rate to another first type switch.

Substantially regarding claim 9, the prior art of record also fails to show the network switch's means for handling data packets as the same manner set forth in claim 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Hareski et al.** (U.S.6,233,246), **Kalkunte et al.** (U.S.6,813,268), **Gleeson et al.** (U.S.5,959,989), **Yang, Muh-rong et al.** ("BATMAN: a new architectural design of a very large next generation gigabit switch Communications, 1997. ICC 97 Montreal, IEEE International Conference on Volume 2, 8-12 June 1997, page(s):740-744) and **Ekman, J. et al.** ("Gigabit switch using free-space and parallel optical data links for a PCI-based workstation cluster"; Lasers and Electro-Optics Society 2000 Annual Meeting. LEOS 2000. 13th Annual Meeting. IEEE Volume 2, 13-16 Nov. 2000 Page(s):494 – 495) are all cited to show devices and methods for improving the switching architectures for high speed data arte in the telecommunication networks, which are considered pertinent to the claimed invention.

9. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272-3126.

**Any response to this action should be mailed to:**

**Commissioner of Patents and Trademarks**

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9306**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR




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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tri H. Phan  
June 7, 2005

  
**BRIAN NGUYEN**  
**PRIMARY EXAMINER**

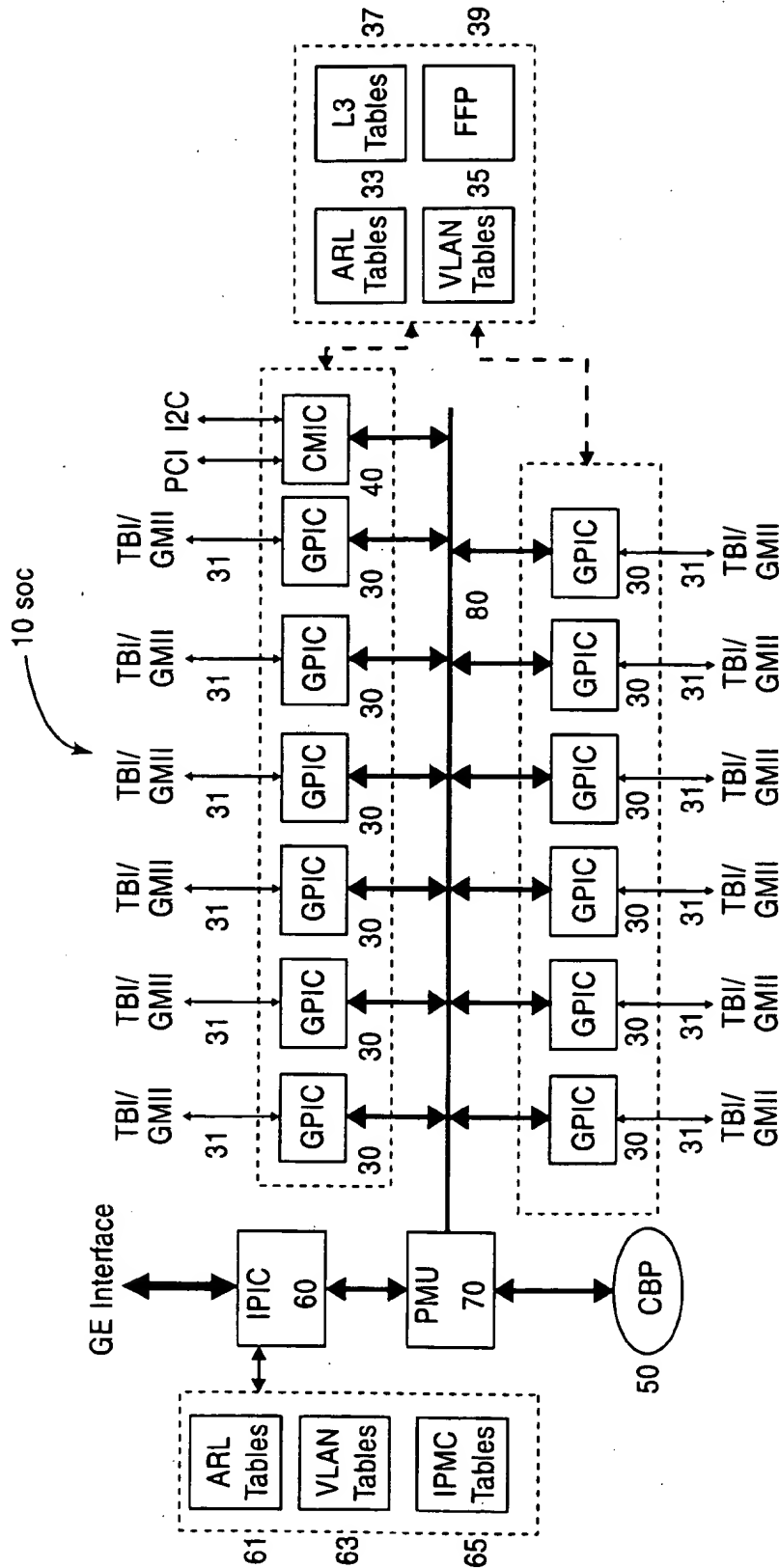
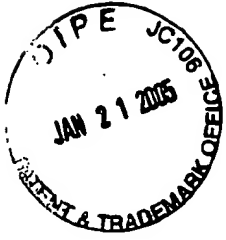


Fig.1

OK to enter  
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